

MT LEGISLATIVE HISTORY

Chapter 402 1979

Bill H _____ S 346

Original bill & hist. C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) 3-7 C

Hearing Date(s) 2-13 C

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2-15 C

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Date Out 3-14 C

DATE OUT 2-15 C

Did this bill originate in an interim committee? Yes No

Committee

Report

Fifty-Sixth LEGISLATIVE SESSION

COMMITTEE ON Education - Senate

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
HB 252	2/1/79	3/1/79	3/1/79						3/1/79
HB 257	2/1/79	3/1/79	3/14/79					3/1/79	
HB 311	2/1/79	3/2/79	3/2/79				3/2/79		
HB 332	2/1/79	3/2/79	3/5/79					3/3/79	
HB 338	2/1/79	3/2/79	3/21/79						3/21/79
SB 341	2/2/79	2/9/79	2/9/79	2/9/79					
SB 345	2/2/79	2/9/79	2/12/79			2/12/79			
SB 346	2/2/79	2/13/79	2/16/79			2/15/79			
SB 348	2/2/79	2/13/79	2/19/79			2/18/79			
SB 379	2/2/79	2/9/79	2/12/79	2/12/79					
SB 349	2/3/79	2/16/79	Tab 1 and 2/16/79						
SB 355	2/3/79	2/12/79	2/12/79	2/12/79					
SB 357	2/3/79	2/12/79	Tab 1 and 2/15/79						
HB 113	2/3/79	2/28/79	2/28/79					2/28/79	
HB 248	2/3/79	3/1/79						3/6/79	
SB 364	2/5/79	2/10/79	2/10/79			2/10/79			

1 *Sen. Bill No. 346*
2 INTRODUCED BY *Sen. Zurlini*
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE MORE EQUAL
5 ACCESS TO THE COURTS OF MONTANA BY REQUIRING THE ALLOWANCE
6 OF COSTS AND ATTORNEYS' FEES TO SUCCESSFUL PLAINTIFFS AND
7 DEFENDANTS WHO ARE NATURAL PERSONS OR SMALL BUSINESSES AND
8 WHO ARE SUCCESSFUL IN A LAW SUIT AGAINST A GOVERNMENTAL
9 ENTITY; AMENDING SECTIONS 18-1-404 AND 25-10-103, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. Section 1. Short title. [Sections 1
13 through 6] may be cited as the "Montana Equal Access to
14 Courts Act".

15 NEW SECTION. Section 2. Definition of small business.

16 (1) "Small business", for the purposes of [sections 1
17 through 6], means a business that:

- 18 (a) is independently owned and operated;
19 (b) is not affiliated with a firm that does not
20 qualify as a small business;
21 (c) has fewer than 25 shareholders, if it is a
22 corporation; and
23 (d) meets the relevant criteria enumerated in
24 subsection (2).
25 (2) (a) A manufacturing business qualifies as a small

1 business if it has fewer than 250 employees or if the
2 average of its annual gross receipts for its preceding 3
3 fiscal years is less than \$5 million.

4 (b) A wholesaling business qualifies as a small
5 business if it has fewer than 50 employees or if the average
6 of its annual gross receipts for its preceding 3 fiscal
7 years is less than \$5 million.

8 (c) A retailing business qualifies as a small business
9 if it has fewer than 25 employees or if the average of its
10 annual gross receipts for its preceding 3 fiscal years is
11 less than \$2 million.

12 (d) A service or research business qualifies as a
13 small business if it has fewer than 25 employees or if the
14 average of its annual gross receipts for its preceding 3
15 fiscal years is less than \$1 million.

16 (e) A general construction business qualifies as a
17 small business if the average of its annual gross receipts
18 for its preceding 3 fiscal years is less than \$5 million.

19 (f) A specialty construction business qualifies as a
20 small business if the average of its annual gross receipts
21 for its preceding 3 fiscal years is less than \$2 million.

22 (g) A general engineering or architectural business
23 qualifies as a small business if the average of its annual
24 gross receipts for its preceding 3 fiscal years is less than
25 \$1 million.

(3) If a firm has been in business for less than 3 years, the average of its annual gross receipts for the purposes of subsection (2) shall be computed by determining its average weekly receipts for the period in which it has been in business and multiplying the result by 52.

(4) If a firm has acquired an affiliate during the accounting period provided for in subsection (2) or (3), the firm's annual gross receipts include, for the purposes of subsections (2) and (3), the affiliate's receipts during the entire accounting period, rather than only its receipts during the period in which it has been an affiliate. The receipts of a former affiliate are not included even if it was an affiliate during a portion of the accounting period.

NEW SECTION. Section 3. Costs to defendant sued by governmental entity. In any civil action brought by the state, a political subdivision, or an agency of the state or a political subdivision in which the defendant is a natural person or small business and not a governmental entity, the defendant, if he prevails, is entitled to the costs enumerated in 25-10-201 and reasonable attorney's fees as determined by the court.

NEW SECTION. Section 4. Award of costs against governmental entity when suit or defense is without reasonable basis or frivolous. In any civil action brought by or against the state, a political subdivision, or an

agency of the state or a political subdivision, the opposing party, whether plaintiff or defendant, is entitled to the costs enumerated in 25-10-201 and reasonable attorney's fees as determined by the court if:

(1) he prevails, wholly or partially, against the state, political subdivision, or agency;

(2) he is a natural person or small business and not a governmental entity; and

(3) the court finds that the state, political subdivision, or agency brought or defended the action without a reasonable basis or that its claim or defense was frivolous.

NEW SECTION. Section 5. Certain actions excluded. [Sections 3 and 4] do not apply to actions involving traffic offenses or violations of municipal ordinances, actions under the jurisdiction of the youth court, or actions undertaken pursuant to Title 49, chapter 2.

NEW SECTION. Section 6. Effect on other provisions of law. Costs shall be granted pursuant to [sections 3 and 4] notwithstanding any other provision of the law to the contrary.

Section 7. Section 18-1-404, MCA, is amended to read:

"18-1-404. Liability of state -- limitations -- costs.

(1) The state of Montana shall be liable in respect to any contract entered into in the same manner and to the same

1 extent as a private individual under like circumstances,
2 except the state of Montana shall not be liable for interest
3 prior to or after judgment or for punitive damages.

4 (2) ~~Costs shall be allowed to an individual or small~~
5 ~~business as provided in [sections 1 through 6]. In all other~~
6 ~~cases, costs~~ shall be allowed in all courts to the
7 successful claimant to the same extent as if the state of
8 Montana were a private litigant, except that such costs
9 shall not include attorney's fees."

10 Section 8. Section 25-10-103, MCA, is amended to read:

11 "25-10-103. When costs discretionary. In Unless
12 another statute requires the allowance of costs, in other
13 actions than those mentioned in 25-10-101, costs may be
14 allowed or not and, if allowed, may be apportioned between
15 the parties on the same or adverse sides, in the discretion
16 of the court, but no costs can be allowed in an action for
17 the recovery of money or damages when the plaintiff fails to
18 recover more than \$50 or in an action to recover the
19 possession of personal property when the value of the
20 property is not more than \$50."

-End-

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 13, 1979

The thirty-sixth meeting of the Senate Judiciary Committee was called to order on the above date by Senator Everett R. Lensink in room 331 of the capitol building at 9:34 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 301:

Senator Lensink turned the chair over to Senator Olson, Vice-Chairman, as he was sponsor of this bill, which is an act to generally revise the state laws relating to child abuse, neglect and dependency. Senator Lensink gave an explanation of this bill and he stated that this bill grew out of a task force on child abuse. He introduced Dr. Clayton McCracken.

Dr. McCracken gave a statement in support of this bill.
(See Exhibit A.)

Dr. Jeff Strickler from the Helena Medical Clinic, P.S.C., gave a statement in support of this bill. (See Exhibit B.)

Norma Vestre, Chief, Social Services Bureau of the Social and Rehabilitation Services, gave a statement in support of this bill. (See Exhibit C.)

Also offered to the committee was further written testimony.
(See Exhibits C and D.)

John Mallard, representing the Montana Coalition of Human Services, gave a statement in support of this bill.

There was some testimony from Beverly Gorme, representing the Junior League of Billings, in support of this bill.

Tom Honzel, representing the County Attorneys Association, stated that they are in favor of this legislation and he said that the most difficult case to handle is the child abuse case and that the child is not able to tell you very much himself.

Phil Campbell, representing the Montana Education Association, stated that they were in support of this bill.

Ange Hansen, representing the Association for the Developmentally Disabled, stated that anything that we can do to prevent child abuse will help prevent mental retardation also.

William Hutchison, representing the Montana Legal Services, stated that they find themselves in the position of representing parents in these cases, and he felt the danger of the bill is that it makes it too easy to remove the child from the home. He also said that the privacy rights of the parents are impaired, and once a child is removed from a family, there is much trauma and this affects the future roles of the child and as an adult as well. He also said that on page 5, line 14 the language "adequate health care" is too broad a term; and on line 15 page 5, that he wondered about the language "threatened harm" and on page 6, he wondered if the definition of dependent would be inclusive of the child who is totally dependant on the state for support. He also questioned the ramifications of the provision on page 12, lines 20 to 23, which provides for removal of any other child who was under the care of the same parent of the child who was abused. He stated there are serious problems with that especially with lowering the standards of removal of a child. He also was concerned with the cost of removing a child to a home under an emergency.

There were some questions asked by Senator Towe to Burt Annin.

Senator Anderson asked if it was typical that where one child in a family is abused that the rest are not. Dr. Strickler said that one child is often the scapegoat, and he is the one who is abused, and when that child is removed, the stress is still there and another child is then abused. He stated that this is the leading cause of death and the leading cause of retardation. Dr. Strickler also stated that when it is determined that a child should be removed, the law states that you have to have a hearing within 72 hours and he feels very strongly that all potentially damaged children should be removed.

Mr. Honzel stated that one of the problems is that once the child is removed and the parent is threatened with action, the parents frequently relinquish the child and they are afraid of losing all the children for a long time.

Senator Brown stated that this should be a civil matter instead of a criminal, and Senator Lensink stated that we do want to amend this to civil.

There being no further comments or questions, the hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 346:

Senator Towe stated that this bill arose from the concern of a number of people. This bill is an act to provide more equal access to the courts of Montana by requiring the allowance of costs and attorney's fees to successful plaintiffs and defendants who are natural persons or small businesses and who are successful in a law suit against a government entity, etc. He gave an example of a case in which he was involved.

Larry Huss, an attorney practicing in Helena with Scribner law firm, and appearing for himself, gave a statement in support of this bill.

J. C. Weingartner, representing the State Bar of Montana, gave a statement in support of this bill.

Jim Beck, representing the Department of Highways, explained many problems he felt were in this bill.

Mike Young, representing the Department of Administration, gave a statement in opposition to this bill.

There were no further proponents and no opponents.

Senator Brown state that there was a problem in subsection 3, line 11, page 4, and he questioned the words "frivolous" and "Without a reasonable basis". He thought this would cause problems.

There were no further questions or comments and the hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 348:

Senator Van Valkenburg gave an explanation of this bill, which is an act to provide for damages in wrongful death actions. He stated that if you have a child or a spouse who are killed instantaneously through wrongful action of another person, in essence, they are not entitled to recover damages for their sorrow and mental anguish. He stated that the decedents also are not entitled to any damages for the pain and suffering they have gone through, but if they survived for any appreciable period of time, then it was something else.

Mike Meloy, representing the Montana Trial Lawyers Association, stated that, if a person was killed instantaneously, what is not available is the sorrow, anguish, grief of the survivors. He stated that in the 1800's, the Lord Campbell Act was enacted and that is the basis of our present law.

Vince Bosh, representing himself and his family, stated that within the last six or seven years, he had lost his only two sons - one who lived 19 months in a coma and one who was killed instantly. He said they were both around twenty years of age. He told how this affected his family adversely, how they suffered much anguish and grief, and because the second boy was killed instantly, there was no way they could collect for suffering and grief.

Date Feb. 12, 1979

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

DATE: Feb. 13, 1979

Judiciary

VISITORS' REGISTER

(Please leave prepared statement with Secretary)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 15, 1979

The thirty-ninth meeting of the Senate Judiciary Committee was called to order in room 331 of the capitol building on the above date by Senator Everett R. Lensink at 6:56 p.m.

ROLL CALL:

All members were present, except Senator Healy, who was excused.

DISPOSITION OF SENATE BILL 357:

Senator Turnage moved that this bill be tabled. The motion carried unanimously.

DISPOSITION OF SENATE BILL 444:

Senator Van Valkenburg moved that this bill do not pass. The motion carried unanimously.

DISPOSITION OF SENATE BILL 394:

Senator Towe moved that this bill do pass. The motion carried.

DISPOSITION OF SENATE BILL 382:

Senator Towe moved to reconsider the action that was taken earlier today. The motion carried unanimously. He explained that he called the probation officer in Billings and he said that 15 days is crucial-that that is the main protection to keep a child from going to jail for a long time and this allows them to set up a continuance in a case in five days and there should be no reason why they shouldn't go to trial in twenty days. He said that sometimes this involves 8 or 9-year-old kids. Senator Towe moved that this bill do not pass.

Senator Turnage questioned what about prejudice. Senator Van Valkenburg stated that they file a petition; and then they are back in the next 15 days, and they have accomplished the same thing.

Senator Towe said that he would withdraw his motion. Senator Towe moved that on line 22, before the ",", insert "when the youth is not in custody" and further amend on line 21, by inserting "if the youth is not in custody". The motion carried unanimously.

Senator Towe moved that the bill be amended on page 1, line 19, by reinserting the words "with prejudice". The motion carried unanimously.

cars and he said that it was very tragic, but these things do happen.

Senator Van Valkenburg stated that these things are relevant in connection with a trial and the same situation may not exist where the damages are entirely justified.

Senator Lensink stated that it seems to him that it just opens things up too much and that there are tragedies in life that just cannot be compensated for.

Senator Towe stated that if the boys had not died, then they would be entitled to all these damages but they had died and they were not.

Senator Van Valkenburg said that he had looked up some law and would like some more time to consider this matter. His request was granted.

DISPOSITION OF SENATE BILL 487:

It was noted that the sponsor did not want the bill. Senator Turnage stated that at the request of Senator Ryan, he moved that this bill be laid on the table. The motion carried unanimously.

DISPOSITION OF SENATE BILL 348:

Senator Towe moved that this bill be amended after line 25, by adding "Section 2. This act shall be effective upon passage and approval and shall apply to all causes of action arising after the effective date of this act." The motion carried unanimously.

Senator Van Valkenburg requested additional time to further amend this bill. His request carried unanimously.

DISPOSITION OF SENATE BILL 346:

Senator Lensink questioned if this doesn't open a new area and he said that it scares him, all these bills are getting the attorneys into courts more and getting more work for them; many are looking for work and they create new laws to create more work. He stated that even doctors do this.

Senator Brown stated that they are going to have malpractice suits against lawyers.

Senator Towe said that this bill applies only to lawsuits that have already been filed and Senator Lensink stated that he thought it takes the brakes off attorneys.

Senator Brown moved that the bill be amended on page 3, line 14, through line 21, by deleting section 3 in its entirety, and

renumber accordingly. The motion carried with Senator Towe voting no.

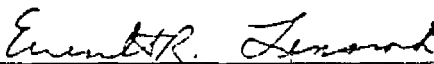
Senator Brown moved that on page 3, line 23 and 24, the bill be amended by striking "without reasonable basis, or" and amend on page 4, line 10, after "that" insert "the claim or defense of" and on line 10, after "agency" insert "which" and on line 11, strike "without defense". The motion carried with Senators Towe and Lensink voting no.

Senator Brown moved that on page 4, line 15, the bill be amended by inserting "or" after "ordinances" and on page 4, line 16, after "court" strike to the end of line 16 and the rest of line 17. The motion carried unanimously.

Senator Towe moved that this bill do pass as amended.

Senator Brown said that he could support the bill now. A vote was taken and there were five votes for yes and 4 votes no. (See Roll Call vote.)

There being no further business, the meeting adjourned at 9:30 p.m.



SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Opening Meeting

Date Feb 15, 1979

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)			

Each Day Attach to Minutes.

SENATE COMMITTEE JUDICIARY

Date _____ Bill No. 346 Time _____

NAME	YES	NO
Lensink, Everett R., Chr. (R)		✓
Olson, S. A., V. Chr. (R)		✓
Turnage, Jean A. (R)		✓
O'Hara, Jesse A. (R)	✓	
Anderson, Mike (R)	✓	
Galt, Jack E. (R)		✓
Towe, Thomas E. (D)	✓	
Brown, Steve (D)	✓	
Van Valkenburg, Fred (D)	✓	
Healy, John E. (Jack) (D)		
	5	4

Secretary _____

Chairman _____

Motion: Do pass, as amended

(include enough information on motion--put with yellow copy of committee report.)

— Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 284	establish reporting for product liability insurers	2/22	Lowe	Monday 3/12	as amended be concurred	3/16
SB 423	release liens held by the dept. of SRS	2/22	VValkenburg	Tues. 3/6	concur	3/8
SJR 27	appoint laymen to commission on practice	2/23	S. Brown	Weds. 3/7	be concurred in	3/17
SB 256	revise statewide ballot issuers laws	2/23	Lensink	Weds 3/7	as amended be concurred in	3/15
SB 346	access to courts - allowance of costs & attorneys fees	2/23	Towe	Weds. 3/7	as amended be concurred in	3/14
SB 432	relating to attendance of trial juries in district court	2/23	Hafferman	Weds. 3/7	be concurred in	3/8

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
March 7th, 1979

The regular meeting of the Judiciary Committee was called to order by Chairman John Scully in room 436 of the Capitol Building at 8:00 a.m. on Wednesday March 7th. All members were present with the exception of Representative Keedy, Holmes and Seifert, all coming in later. Bills scheduled for hearing were Senate Bills 288, 364, 250, 256, 322, 346, 355, 394, 454 and 432.

SENATE BILL NO. 322: Senator Healy. This bill is to protect employers from claims for contribution or indemnity asserted by a third person. He read through the bill, and commented on worthless compensation benefits.

BILL KIRKPATRICK: Champion International. He said that the bill was approved unanimously by the Judiciary Committee in the Senate and on both second and third reading. He submitted written testimony to the committee, copy attached.

TIM REARDON: Division of Workers Compensation. We support the program.

WES BENNETT: Self-Insurers. Mr. Bowles of the Montana Chamber says that small business supports the bill.

SEANTOR HEALY: Many small workers might be put out of business. They would be protected by a bill like this.

There was no discussion and the hearing closed on Senate Bill No. 322.

SENATE BILL NO. 346: Senator Towe. This bill would allow more equal access to the courts by allowing the court to award costs and attorneys fees to people who are successful in a law suit against a governmental entity if the claim is judged to be frivolous or pursued in bad faith. If the state agencies or the political subdivisions, that brought or defended the action, is found by the court to be frivolous or in bad faith then they would be entitled to the costs enumerated. It might be called the equal access to the courts act. He read through the bill, and suggested an amendment on page 4, line 13, following frivolous to insert "or pursued in bad faith". He commented that this would not apply to traffic situations or accidents. He mentioned the reason for the amendment which would be in keeping with the administrative code committee. Discussion about this.

BARRY STEVENSON: National Federation of Independent Businessmen. 79% of our members favor this bill. He presented a copy of written testimony, copy attached.

REPRESENTATIVE SCULLY: You mentioned an administrative code committee bill, what is the status of that bill. He asked this of Senator Towe.

SENATOR TOWE: That line was amended out in order to be put in this bill.

REPRESENTATIVE KEEDY: Discussion about the bill being limited to small business. On line 6, page 4, can you imagine a situation where both sides could be equally at fault. He went into detail on this. Then followed discussion about legitimate arguments, frivolous lawsuits, and gave an example of losing in one part and winning in another part.

There was no other discussion and the hearing closed on Senate Bill No. 346.

SENATE BILL NO. 256: Senator Lensink. This bill would revise the laws relating to state-wide ballot issues. He went through the bill and explained, misleading titles and statements of implication. He mentioned one of the initiatives that had been misleading in that if you wanted to vote a certain way you had to vote opposite of what you wanted. This was on a gambling issue in which you were to vote for lower taxes or against lower taxes when actually it was a gambling issue. He went over the judicial review and what the Attorney General would do under this bill. This is one of the few places that might save some money. This would change it so that only each mailing address would get one of the explanations and it would thus save some money.

MIKE McGRATH: Attorney Generals office. Under the present system the petitions have to go to the Secretary of State, and what we propose to do is at the time of the petition the Secretary of State would prepare the statement of implication. He talked about the initiatives we had last time and that most were self-serving and misleading. We have some amendments. The proposed amendment would require that a person opposing would have to file a petition within 10 days. It would help some of the problems. It says that you cannot turn in a petition more than one year in advance and the reason for that is clear. He gave examples of several issues that had been on the last ballot.

MARGARET DAVIS: League of Women Voters. We support this bill and we also support the provision that makes the voter pamphlet widely available.

LES LOBEL: Montana, Dakota Utilities. I am asking about the 10 day limit. Should it not be a little more flexible. There was discussion about HB 768, Representative Hands bill, and that it would conflict with this bill, and that Mr. Hand said he would withdraw his bill if this one should pass.

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
Executive session
and Regular meeting combined.
March 14, 1979

The regular meeting of the House Judiciary Committee was called to order at 8:00 a.m. by Chairman Scully in room 436 of the Capititol Building. Bills scheduled were SB 112, 132, 395, 481 and HJR 55. Representatives Uhde and Conroy were excused.

Because Senate Bills 112, 132 and 395 had been heard already in other House Committees they were merely reviewed by the Judiciary Committee.

While the committee waited for Senator Regan as sponsor of the Bill No. 481 Representative Scully suggested that some action be taken on bills still in committee.

SENATE BILL NO. 511: Representative Iverson moved "be concurred in". The motion carried with the vote unanimous. Representative Keedy will carry on the floor.

SENATE BILL NO. 409: Representative Keedy moved to amend by reinserting the original language, on lines 17 and 18, page 3. The motion carried with the vote unanimous. Representative Holmes moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Holmes will carry if Representative Dussault does not, since she is one of the sponsors.

HOUSE JOINT RESOLUTION 55: Representative Ramirez, as chief sponsor of the bill, went through it and explained it. He suggested that there should be a study committee.

MIKE ABLEY: Supreme Court. This bill is requesting assignment of an interim committee to evaluate Montana's Judicial district boundaries, number of judges and court support services. There is quite a disparity in travel expenses. We would like to take an in-depth look at this. He went on to explain a little further as to efficiency and manpower requirements.

MARGARET DAVIS: League of Women Voters. The League is in support of HJR 55 and endorse it totally. She gave the committee a copy of written testimony. (copy attached) We can not afford to authorize more judges. By undertaking a study we feel the legislature will be very much more capable of action on this. They will be more able to deal with it.

REPRESENTATIVE KEMMIS: Will this go to the next legislature.

REPRESENTATIVE RAMIREZ: Just the planning committee for the interim committee would set up a district court planning committee. The interim committee would not have any function other than the planning committee.

There was general discussion about what information should be allowed out. Also followed discussion about whether it is necessary that the governor have this information and whether the commission is balanced.

Larry Weinberg, staff attorney, explained how the commission is appointed and read the law that deals with it.

The question was called and by roll call vote the motion carried, 10 yes, 7 no, with two representatives absent, be concurred in.

SENATE BILL NO. 346: Representative Keedy moved "be not concurred in". He then said he wished to amend the bill and spoke to his amendments, talking about the definition of frivolous.

Representatives Lory, Curtiss and Kemmis spoke on the motion. Discussion followed about court costs.

Representative Lory moved to amend the title, line 7 and line 9, and line 6 and 5, to strike. He discussed this. He said he wanted to add language on line 9. On page 4, line 21, strike, "shall" and insert "may". There was discussion about the language "prevailing party in multiple causes of action". The motion carried with the vote unanimous. (copy attached) Representative Lory moved be "concurred in as amended." The motion carried with Representatives Roth, Eudaily, Teague, Pavlovich and Seifert voting "no". Representative Lory will carry, however, he will check with Representative Quilici and see if he wants to carry it, since he is one of the sponsors of the bill.

SENATE BILL NO. 355: Representative Lory moved "be concurred in". The motion carried with the vote unanimous. Representative Pavlovich will carry on the floor.

SENATE BILL NO. 431: Representative Keedy led a discussion about what the bill actually does. The motion was made "to pass for the day", and Larry Weinberg will check. The motion carried with the vote unanimous.

SENATE BILL NO. 394: Representative Keyser moved "be concurred in". The motion carried with Representative Curtiss voting "no". No one was appointed to carry the bill, an oversight of the acting chairman.

SENATE BILL NO. 454: Representative Keyser moved "be concurred in". The motion carried with Representative Holmes voting "no".

March 14, 1979

HOUSE OF REPRESENTATIVES

Judiciary Committee amendments to SENATE BILL NO. 346.

1. Title, lines 5 and 6.
Following: "BY"
Strike: "REQUIRING THE ALLOWANCE OF"
Insert: "ALLOWING THE COURT TO AWARD"
2. Title, line 6.
Strike: "SUCCESSFUL"
3. Title, line 7.
Strike: "WHO ARE NATURAL PERSONS OR SMALL BUSINESSES AND"
4. Title, line 9.
Following: "FRIVOLOUS"
Insert: "OR PURSUED IN BAD FAITH"
5. Page 1, line 13 through line 14, page 3.
Strike: sections 1 and 2 in their entirety
Re-number: subsequent sections
6. Page 3, line 25.
Following: "frivolous"
Insert: "or pursued in bad faith"
7. Page 4, line 6.
Strike: ", wholly or partially,"
8. Page 4, line 7.
Following: ";"
Insert: "and"
9. Page 4, lines 8 and 9.
Strike: subsection (2) in its entirety
Re-number: subsequent subsection
10. Page 4, line 13.
Following: "frivolous"
Insert: "or pursued in bad faith"
11. Page 4, lines 14 through 19.
Strike: section 4 in its entirety
Re-number: subsequent sections

March 14, 1979

HOUSE OF REPRESENTATIVES

Judiciary Committee amendments to SENATE BILL NO. 346.

Page 2

12. Page 4, line 21.

Following: "Costs"

Strike: "shall"

Insert: "may"

Following: "SECTION"

Strike: "3"

Insert: "1"

13. Page 5, line 6.

Following: "Costs"

Strike: "shall"

Insert: "may"

14. Page 5, lines 6 and 7.

Strike: "to an individual or small business"

15. Page 5, line 7.

Following: "1"

Strike: "through"

Insert: "and"

Following: "6"

Strike: "5"

Insert: "2"

16. Page 5, line 14.

Strike: line 14 in its entirety

17. Page 5, line 15

Following: line 14

Insert: "otherwise provided in"

Following: "actions"

Insert: "other"

AND AS AMENDED BE CONCURRED IN

SENATE BILL NO. 346

INTRODUCED BY TOME, QUILICI, LOWE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE MORE EQUAL ACCESS TO THE COURTS OF MONTANA BY REQUIRING THE ALLOWANCE OF ALLOWING THE COURT TO AWARD COSTS AND ATTORNEYS' FEES TO SUCCESSFUL PLAINTIFFS AND DEFENDANTS WHO ARE NATURAL PERSONS OR SMALL BUSINESSES AND WHO ARE SUCCESSFUL IN A LAW SUIT AGAINST A GOVERNMENTAL ENTITY IF THE ENTITY'S CLAIM OR DEFENSE IS FRIVOLOUS OR PURSUED IN BAD FAITH; AMENDING SECTIONS 18-1-404 AND 25-10-103, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION~~ Section 1v--Short--title--[Sections--1 through 6 2j--may-be-cited-as-the-"Montana-Equal-Access-to-Courts-Act"]

~~NEW SECTION~~ Section 2v--Definition-of-small-business--(1)--"small-business"--for--the--purposes--of--[Sections--1 through 6 2j]v--means-a-business-that:

(a)--is-independent-ly-owned-and-operated;

(b)--is-not-affiliated-with-a-firm-that-does-not

qualify-as-a-small-business;

(c)--has-fewer-than-25-shareholders--if-it-is-a corporation-and

(d)--meets--the--relevant--criteria--enumerated--in

subsection-(2)v

(2)--(a)-A-manufacturing-business-qualifies-as-a-small-business--if--it--has--fewer--than--250--employees-or-if-the-average-of-its-annual-gross-receipts--for--its--preceding--3-fiscal-years-is-less-than-\$5-million;

(b)--A-wholesaling-business-qualifies--as--a-small-business-if-it-has-fewer-than-50-employees-or-if-the-average-of-its-annual-gross-receipts--for--its--preceding--3--fiscal-years-is-less-than-\$5-million;

(c)--A-retailing-business-qualifies-as-a-small-business-if-it-has-fewer-than-25-employees-or-if-the-average-of-its-annual-gross-receipts-for-its-preceding-3--fiscal--years--is-less-than-\$2-million;

(d)--A-service--or--research--business--qualifies-as-a-small-business-if-it-has-fewer-than-25-employees-or--if--the-average--of--its--annual--gross-receipts-for-its-preceding-3-fiscal-years-is-less-than-\$1-million;

(e)--A-general-construction-business-qualifies--as--a-small-business--if-the-average-of-its-annual-gross-receipts-for-its-preceding-3-fiscal-years-is-less-than-\$5-million;

(f)--A-specialty-construction-business-qualifies--as--a-small-business--if-the-average-of-its-annual-gross-receipts-for-its-preceding-3-fiscal-years-is-less-than-\$2-million;

(g)--A-general-engineering--or--architectural--business-qualifies--as--a-small-business-if-the-average-of-its-annual

gross receipts for its preceding 3 fiscal years is less than \$1 million.

(3) If a firm has been in business for less than 3 years, the average of its annual gross receipts for the purposes of subsection (2) shall be computed by determining its average weekly receipts for the period in which it has been in business and multiplying the result by 52.

(4) If a firm has acquired an affiliate during the accounting period provided for in subsection (2) or (3), the firm's annual gross receipts include, for the purposes of subsections (2) and (3), the affiliate's receipts during the entire accounting period rather than only its receipts during the period in which it has been an affiliate. The receipts of a former affiliate are not included even if it was an affiliate during a portion of the accounting period.

NEW SECTION. Section 3. Costs to defendant sued by governmental entity in any civil action brought by the state, a political subdivision, or an agency of the state or a political subdivision in which the defendant is a natural person or small business and not a governmental entity, the defendant, if he prevails, is entitled to the costs enumerated in 25-10-201 and reasonable attorney's fees as determined by the court.

NEW SECTION. Section 1. Award of costs against governmental entity when suit or defense is without

reasonable basis or frivolous OR PURSUED IN BAD FAITH. In any civil action brought by or against the state, a political subdivision, or an agency of the state or a political subdivision, the opposing party, whether plaintiff or defendant, is entitled to the costs enumerated in 25-10-201 and reasonable attorney's fees as determined by the court if:

(1) he prevails wholly or partially against the state, political subdivision, or agency; **AND**

(2) he is a natural person or small business and not a governmental entity; and

(3) (2) the court finds that THE CLAIM OR DEFENSE OF the state, political subdivision, or agency WAS brought or defended the action without a reasonable basis or that its claim or defense was frivolous OR PURSUED IN BAD FAITH.

NEW SECTION. Section 4. Certain actions excluded. [Sections **SECTION 3** and 4] do **NOT** apply to actions involving traffic offenses or violations of municipal ordinances, **OR** actions under the jurisdiction of the youth court, or actions undertaken pursuant to title 49, chapter 2.

NEW SECTION. Section 2. Effect on other provisions of law. Costs shall **MAY** be granted pursuant to [sections **SECTION 3 1** and 4] notwithstanding any other provision of the law to the contrary.

1 Section 3. Section 18-1-404, MCA, is amended to read:

2 "18-1-404. Liability of state -- limitations -- costs.

3 (1) The state of Montana shall be liable in respect to any
4 contract entered into in the same manner and to the same
5 extent as a private individual under like circumstances,
6 except the state of Montana shall not be liable for interest
7 prior to or after judgment or for punitive damages.

8 (2) Costs ~~shall~~ MAY be allowed ~~to an individual or~~
9 ~~small-business as provided in [sections 1 through AND 6 5~~
10 ~~2]. In all other cases, costs~~ shall be allowed in all courts
11 to the successful claimant to the same extent as if the
12 state of Montana were a private litigant, except that such
13 costs shall not include attorney's fees."

14 Section 4. Section 25-10-103, MCA, is amended to read:

15 "25-10-103. When costs discretionary. ~~in Unless~~
16 ~~another statute requires the allowance of costs in other~~
17 ~~OTHERWISE PROVIDED IN~~ actions OTHER than those mentioned in
18 25-10-101, costs may be allowed or not and, if allowed, may
19 be apportioned between the parties on the same or adverse
20 sides, in the discretion of the court, but no costs can be
21 allowed in an action for the recovery of money or damages
22 when the plaintiff fails to recover more than \$50 or in an
23 action to recover the possession of personal property when
24 the value of the property is not more than \$50."

-End-